

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

ALICIA CUMMINGS,

Plaintiff,

v.

LAYNE MITCHELL, LEWIS GOLDEN,
and AU MEDICAL CENTER, INC.
and Its Predecessors and
Successors,

Defendants.

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CV 118-161

O R D E R

Before the Court are Defendants' motions to dismiss Plaintiff's original complaint filed on February 4, 2019. (Docs. 9, 10.) On February 26, 2019, Plaintiff filed an amended complaint.¹ (Doc. 15.) "It is well-established that an amended

¹ Pursuant to Federal Rule of Civil Procedure 15, "A party may amend its pleading once as a matter of course within: (A) [twenty-one] days after serving it, or (B) if the pleading is one to which a responsive pleading is required, [twenty-one] days after service of a responsive pleading or [twenty-one] days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." FED. R. Civ. P. 15(a)(1). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Id. at 15(a)(2).

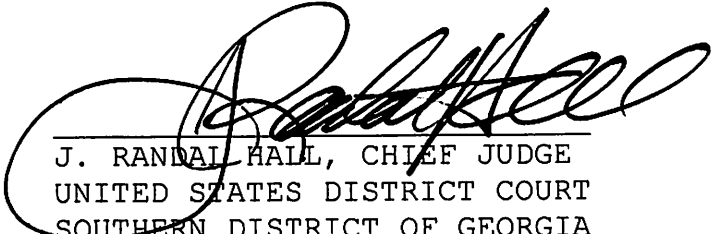
On February 19, 2019, the Court granted Plaintiff's consent motion for an extension of time to respond to Defendants' motions to dismiss (Consent Motion, Doc. 11). (Consent Order, Doc. 12.) The Consent Order extended Plaintiff's deadline to respond through February 26, 2019. (Id.) On February 26, 2019, Plaintiff filed her amended complaint, twenty-two days after Defendants filed their motions to dismiss. Although the Consent Order granted Plaintiff an extension of time to respond to Defendants' motions to dismiss, it neither extended Plaintiff's time to file an amended complaint as a matter of right nor granted leave to file an amended complaint. Consequently, Plaintiff could only file the amended complaint with "the opposing party's written consent."

In the Consent Motion, the parties state: "All parties are aware that in lieu of a response to the [m]otions to [d]ismiss, Plaintiff will be filing an [a]mended [c]omplaint, which will moot the current [m]otions to [d]ismiss."

complaint super[s]edes an original complaint and renders the original complaint without legal effect." Renal Treatment Ctrs.-Mid-Atl., Inc. v. Franklin Chevrolet-Cadillac-Pontiac-GMC, No. 608CV087, 2009 WL 995564, at *1 (S.D. Ga. Apr. 13, 2009) (quoting In re Wireless Tel. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 928 (8th Cir. 2005)) (citing Fritz v. Standard Sec. Life Ins. Co. of N.Y., 676 F.2d 1356, 1358 (11th Cir. 1982)); accord Malowney v. Fed. Collection Deposit Grp., 193 F.3d 1342, 1345 n.1 (11th Cir. 1999) ("An amended complaint supersedes an original complaint.").

Here, Plaintiff's amended complaint supersedes her original complaint. Accordingly, **IT IS HEREBY ORDERED** that Defendants' motions to dismiss Plaintiff's original complaint (Docs. 9, 10) are **DENIED AS MOOT**.

ORDER ENTERED at Augusta, Georgia, this 20th day of September, 2019.


J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

(Consent Motion, at 2.) The Court could construe this statement as Defendants consenting to Plaintiff filing the amended complaint. However, even if this statement is insufficient under Rule 15, the Court retroactively allows the amended complaint, and the amended complaint is deemed the operative complaint as of its filing date, February 26, 2019. First, "[t]he court should freely give leave when justice so requires." Id. Second, "[o]rdinarily, a party must be given at least one opportunity to amend before the district court dismisses the complaint." Corsello v. Lincare, Inc., 428 F.3d 1008, 1014 (11th Cir. 2005) (per curiam). Third, even if Defendants did not expressly consent, they certainly have not objected to the filing of the amended complaint.